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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1758

ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS.

Petitioners,

vs.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, ET AL., AND AMERICAN AIRLINES, INC.,

Respondents.

ANSWER OF RESPONDENT AMERICAN AIRLINES, INC., TO PETITION FOR WRIT OF CERTIORARI.

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American Airlines, Inc., urges the denial of the petition for writ of certiorari to permit the conclusion of this eight-years old litigation in which there have been three earlier appeals, although American changed the challenged practice in 1970. The petition attacks the allowance of occupational seniority under a settlement agreement that compromised a class action brought in 1970 under Title VII of the 1964 Civil Rights Act. Although the settlement agreement provided for occupational seniority for reinstated employees, it stated that, if the union for incumbents did not concur in writing, occupational seniority would "be determined by the Court in its discretion, pursuant to the provisions of Section 706(g), and all other applicable provisions of law, without contest or objection by American Airlines". The union did not concur but objected. Despite

American's limited interest, it has opposed and continues to oppose the union's objection, which has delayed the carrying out of the settlement of this protracted litigation.

In the district court the union failed to support its objection. A memorandum on its motion for leave to intervene requested permission to present evidence concerning the effect of occupational seniority on the seniority rights of employed flight attendants. The union represented that the evidence would convince the district court that the seniority restoration provisions of the settlement agreement should not be approved. Yet, at the settlement hearing, union counsel submitted no evidence. Its counsel merely argued that there were competing equities and that the presently employed flight attendants, being innocent wrong-doers, should not be penalized because of any discrimination suffered by the plaintiffs.

The legal questions raised by the union would require the trial of important issues for each settled claim, such as Title VII time limit compliance and willingness to work since termination. In a case such as this, with an estimated 150 class plaintiffs seeking reinstatement, the necessity of such trials would be likely to prevent any settlement that allows occupational seniority even though the effect of the allowance on 5000 incumbents, as the court of appeals said (Pet. Cert. A 7-8) "appeared to be minimal."

In ruling against the union, the district judge stated that the present employees would maintain positions no worse than if the plaintiffs had not left the airline in the first place and that the settlement was the best and most equitable result that could be achieved. The order approving the settlement found it to be a "fair, equitable, and efficient compromise and resolution of the issues" and directed specifically, pursuant to § 706(g) and the settlement agreement, that the re-employed class members should be restored to full occupational seniority. If the allowance of seniority were to have an inequitable effect upon the over 5,000 incumbents, the union representing them would have

had the evidence and would have presented it at the hearing. The district court's discretionary finding was entirely proper as a result of the union's failure to support its objection by contrary evidence. The court of appeals was emphatic in affirming the district court's finding:

> "On the record before us, we find not the slightest basis for concluding that the court abused its discretion" (Pet. Cert. A10).

CONCLUSION.

Respondent American Airlines, Inc., urges the denial of the certiorari petition.

Respectfully submitted,

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